

REMARKS

Claims 1-43 are pending in this application. Claims 1-43 are subject to restriction. No new matter has been added, reexamination and reconsideration is respectfully requested.

Summary of Restriction Requirement

The non-final Office Action dated January 08, 2007 asserts that the claims of the patent application are directed to two distinct inventions and has made a restriction requirement to restrict the application to one of the two inventions defined by the Examiner as:

- I. Claims 1-20 and 34-43, drawn to methods of sensor calibration
- II. Claims 21-33, drawn to implanted biological sensors.

The non-final Office Action further states that claims from Subcombination I above are directed to patentably distinct species:

Species I, directed to a method of sensor calibration using data array.

Species II, directed to a method of sensor calibration using a calibration curve.

After through review, applicant believes that all of the claims in Subcombination I are also within Species I.

Provisional Election with Traverse

In response to the restriction requirement set forth in the Office Action mailed January 8, 2007, Applicant hereby provisionally elects Subcombination I, and the Species that corresponds to Claim 1-20 and 34-43 (believed to be Species I), for examination, with traverse. Applicant reserves the right to file a divisional application to seek patent protection for the subject matter of any non-elected combination, subcombination or species.

Claim 33 should be examined with Subcombination I, Claims 1 through 20

The non-final office action asserts that independent Claim 33 is drawn to implanted biological sensors within Subcombination II (while independent Claim 1 is drawn to methods of sensor calibration within Subcombination I). It is respectfully submitted that Claims 1 and 33 should be examined and be part of the same subcombination due to the correspondance in the recited

method and structure. Those two claims have corresponding text, such that the search and examination of those claims would likely be identical. In particular, the text of claim 33 corresponds to the text of claim 1, but with “means” for performing the recited features (while claim 1 refers to the method of performing the same recited features). The Examiner is requested to compare the text of claims 1 and 33. For consistency in the examination and minimizing burdens on the applicant and the USPTO, those claims should be examined together, in the same patent application.

In addition, it is submitted that Claim 33 does not correspond to Subcombination II (defined by the examiner as claims drawn to implanted biological sensors), because there are no limitations in Claim 33 that require implantation. Instead, Claim 33 refers to sensor calibration (consistent with the Examiner’s definition of Subcombination I).

For example, the preamble of currently amended Claim 33 recites “A sensor calibration system” and independent Claim 1 recites “A method for calibrating a sensor comprising”. Hence Claim 33 is directed towards “sensor calibration” (the subject matter of Subcombination I) and not towards “implanted biological sensor” (the subject matter of Subcombination II).

Furthermore, the first feature of amended Claim 1 recites “compiling a calibration array of data values relating to the sensor”. Similarly the first feature of Claim 33 recites a “means for compiling a calibration array from data values relating to the sensor”. In this “means for compiling” feature of claim 33, the sensor is not limited to an implanted biological sensor (the subject matter of Subcombination II). Accordingly, the first feature of Claim 33 does not place the claim within Subcombination II.

The second feature of Claim 1 recites “generating a calibration curve based on the data values in the calibration array.” Similarly the second feature of Claim 33 recites a “means for generating a calibration curve based on the data values in the calibration array.” Similar to the first feature, the “means for generating” feature of claim 33 is not limited to a implanted biological sensor (the subject matter of Subcombination II). Accordingly, the second feature of Claim 33 does not place the claim within Subcombination II.

The third feature of Claim 1 recites “adjusting a nominal output current of the sensor a first time based on data in the calibration array”. Similarly the third feature of Claim 33 recites a “means

for adjusting a nominal output current of the sensor a first time based on data in the calibration array". Similar to the first and second features, this "means for adjusting" feature of claim 33 is not limited to a implanted biological sensor (the subject matter of Subcombination II). Accordingly, the third feature of Claim 33 does not place the claim within Subcombination II.

As shown above, Claims 1 and 33 have correspondingly-worded features and, thus, would involve the same search and examination. Furthermore, neither the preamble nor any of the features of claim 33 refer limit that claim to "implanted" biological sensors (the subject matter of Subcombination II). For the abovementioned reasons, the restriction is respectfully traversed, at least with respect to the placement of Claim 33 into a Subcombination that is different from the Subcombination that includes Claim 1.

Species I and II Traversal

The non-final office action asserts that Subcombination I (Invention I) contains patentably distinct species (I and II). Species I is directed to a method of a sensor calibration using a data array and Species II being directed to a method o sensor calibration using a calibration curve. The different Species noted by the Examiner are respectfully traversed, in that the claimed method involves compiling a calibration array and generating a calibration curve based on data values in the calibration array. Thus, the claims include a reference to the use of a data array (a calibration array of data) and also the use of a calibration curve. Thus, it appears that the claims involve a combination of Species I and II and it is not clear how the Species I is distinguished from Species II in the context of the claimed invention.

However, for purposes of ensuring compliance and full responsiveness, Applicant provisionally elects, with traverse, the Species in which Claim 1 is present. Because the terms data and array is primarily used in Claims 1-20 and 33-43, it is submitted that those claims are included in elected Species 1. However, because those claims also refer to a calibration curve, those claims are also believed to be generic to Species I and II..

The restriction between Species I and II is respectfully traversed, as the distinction between those Species is not clear and all of the claims are apparently are generic to the two Species (insofar as the Species definitions are understood).

Amendment to Claims

Claims 1 and 33 are amended, as described above. Claim 21 is amended to depend on Claim 33, while Claim 34 is amended to depend on Claim 1. Various dependent claims are amended for consistency.

Further current amendments to the claims relates to subject matter that had been disclosed in the original application, for example, with respect to original claims 34 and Fig 4. Therefore no new matter has been added to the application.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-0872. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-0872.

Respectfully submitted,

Date: February 6, 2007
FOLEY & LARDNER LLP
Customer Number: 23392
Telephone: (310) 975-7963
Facsimile: (310) 557-8475

By: *Ted R. Rittmaster* 36,409
for Ted R. Rittmaster
Attorney for Applicant
Registration No. 32,933